

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES M. SCHMIDT and ROBERT M.
SCHMIDT,

Plaintiffs,

v.

JP MORGAN CHASE BANK, N.A.,
CALIFORNIA RECONVEYANCE
COMPANY,

Defendants.

No. C 12-05677 JSW

**ORDER ADOPTING REPORT
AND RECOMMENDATION OF
DISMISSAL WITHOUT
PREJUDICE**

On November 5, 2012, Plaintiffs filed applications to proceed *in forma pauperis* and a Complaint. On January 11, 2013, Magistrate Judge Jaqueline Scott Corley, to whom the case originally was assigned, issued a Report and Recommendation in which she recommended that: (1) the Court grant Plaintiffs' applications to proceed *in forma pauperis*; and (2) dismiss the Complaint because Plaintiffs had not sufficiently alleged that there was a basis for federal jurisdiction. Judge Corley noted that Plaintiffs' complaint only set forth state law causes of action and failed to establish complete diversity of parties. The Court has received no objections and the time for filing objections has passed.

The Court has considered Magistrate Judge Corley's Report and Recommendation and concludes that Report is well-reasoned. Therefore, for the reasons articulated by Judge Corley's and for the additional reasons set forth herein, the Court adopts Judge Corley's Report and Recommendation.

1 Although the Court GRANTS Plaintiffs' request to proceed *in forma pauperis*, as Judge
2 Corley noted, the *in forma pauperis* statute provides that the Court shall dismiss the case if,
3 *inter alia*, the Complaint fails to state a claim on which relief may be granted. 28 U.S.C.
4 § 1915(e)(2)(B). Federal courts are under a duty to raise and decide issues of subject matter
5 jurisdiction *sua sponte* at any time it appears subject matter jurisdiction may be lacking. Fed.
6 R. Civ. P. 12; *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983). If the Court
7 determines that subject matter jurisdiction is lacking, the Court must dismiss the case. *Id.*; Fed.
8 R. Civ. P. 12(h)(3).

9 Federal courts are courts of limited jurisdiction. *See, e.g., Kokkonen v. Guardian Life*
10 *Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts can only adjudicate cases which the
11 Constitution or Congress authorize them to adjudicate: those cases involving diversity of
12 citizenship (where the parties are from diverse states), or a federal question, or those cases to
13 which the United States is a party. *See, e.g., Kokkonen v. Guardian Life Insurance Co. of*
14 *America*, 511 U.S. 375 (1994). Federal courts are presumptively without jurisdiction over civil
15 cases and the burden of establishing the contrary rests upon the party asserting jurisdiction. *Id.*
16 at 377. It is undisputed that the United States is not a party to this case. It is evident from the
17 Complaint that Plaintiffs are residents of California. Although Plaintiffs allege that California
18 Reconveyance Company is a Delaware corporation, it is, in fact a California corporation and ac
19 citizen of California. Thus, complete diversity does not exist.

20 However, because the Court cannot say there is no legal theory upon which Plaintiffs
21 could assert a basis for federal jurisdiction, it shall give the Plaintiffs one further opportunity to
22 file an amended complaint that sets forth a viable basis for federal jurisdiction. Plaintiffs shall
23 file an amended complaint by no later than March 8, 2013. If Plaintiffs fail to file an amended
24 complaint by that date, the Court shall dismiss this case without prejudice.

25 The Court HEREBY ADVISES Plaintiffs that a Handbook for Pro Se Litigants, which is
26 available through the Court's website or in the Clerk's office, contains helpful information
27 about proceeding without an attorney. The Court also advises Plaintiffs that they also may wish
28 to seek assistance from the Legal Help Center. Plaintiffs may call the Legal Help Center at

1 415-782-9000, extension 8657, or sign up on the 15th Floor of the Courthouse, Room 2796, for
2 a free appointment with an attorney who may be able to provide basic legal help, but not legal
3 representation.

4 **IT IS SO ORDERED.**

5 Dated: February 13, 2013


JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JAMES M. SCHMIDT ET.AL. et al,
Plaintiff,

Case Number: CV12-05677 JSW

CERTIFICATE OF SERVICE

v.

JP MORGAN CHASE BANK, N.A.
ET.AL. et al,


Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 13, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James M. Schmidt
Robert M. Schmidt
2260 Maximilian Drive
Campbell, CA 95008

Dated: February 13, 2013


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk